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October 28, 1997

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Mr. William Kennard
Chairman Designate
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Ex Parte Letter Re: Cases WT 97-¹⁹²~~197~~/MM Docket 97-182, and DA 96-2140

Dear Chairman Kennard,

The City of Gladstone, Missouri would like to express its opposition to the action in the preceding cases. Congress and the courts have long recognized that zoning is a matter of local concern. In the 1996 Telecommunications Act Congress expressly preserved local zoning authority over cellular towers. By promulgating new rules the Federal Communications Commission (FCC) is trying to seize jurisdiction over local zoning of cellular and broadcast towers despite the intentions of Congress and the many precedents set by the courts.

The FCC's recent rulemakings also violate the principles of federalism. In our system of government zoning authority has always been reserved for local governments. Zoning decisions affect people's everyday lives. In the local zoning process, citizen's have an opportunity for their voice to be heard and the decisions are made by officials who live in the community the zoning affects. Unlike local governments, the FCC has no zoning knowledge or expertise and is not readily accessible to local residents. By preempting local zoning authority the FCC is hurting the same public it is supposed to be serving and protecting.

The City of Gladstone also finds it unreasonable that the new rules would not allow aesthetics, property values, and environmental effects to be factors in zoning decisions regarding cellular and broadcast towers. While the City agrees that safety is an important factor in any zoning decision, we do not agree that it should

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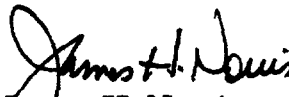
be the only factor in the zoning of cellular and broadcast towers. The citizens who must live with these towers on a daily basis are rightfully concerned with the aesthetics, reduced property values, and environmental impacts these towers cause.

Further, the City believes the FCC has not fully considered the ramifications of creating an artificial time limit in which municipalities must act on zoning requests for cellular and broadcast towers. A twenty-one (21) to forty-five (45) day limit allows very little time for municipal staff to fully review the request, for interested property owners to be notified of the request, for a planning commission to review the request and for a city council to hold public hearing and vote on the request. In fact many states, including Missouri, require the publication of legal notices for these public hearings which adds to the time line.

Finally, by automatically granting zoning requests that are not acted on within this time limit, the FCC shows little concern for local, state, and federal laws that the request may violate. The time limit, combined with the FCC's new rule allowing review of local zoning decisions for the "taint" of radiation concerns threatens the freedom of speech and right to petition guaranteed in the Constitution. Facing short deadlines and fearful of FCC preemption if radiation concerns are raised, municipal governments and their citizens are discouraged from having open, honest democratic debate about the merits of tower zoning requests.


Therefore, the City of Gladstone asks the FCC to please terminate the above referenced proceedings without taking the actions proposed therein.

Sincerely,


James H. Norris
City Manager

JHN/mbr

cc:


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Mayor and City Council

[attached list]

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